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January 16, 2007

FLORENCE P. BELSER  
GENERAL COUNSEL

**VIA E-FILING & HAND DELIVERY**

The Honorable Charles L.A. Terreni  
Chief Clerk/Administrator  
South Carolina Public Service Commission  
101 Executive Center Dr., Suite 100  
Columbia, SC 29210

Re: Application of Wyboo Plantation Utilities, Incorporated for Approval of New Schedule of Rates and Charges for Water and Sewer Services  
**Docket No. 2005-13-WS**

Dear Mr. Terreni:

Enclosed please find the original and one copy of the Office of Regulatory Staff's Answer in Opposition to the Petition To Intervene in the above referenced docket.

Please note that the attached documents are exact duplicates, with the exception of the form of the signature, of the e-filed copy submitted to the Commission in accordance with its electronic filing instructions.

By copy of this letter we are also serving all other parties of record. Please let me know if you have any questions.

Sincerely,

C. Lessie Hammonds

CLH/pjm  
Enclosures

cc: John F. Beach, Esquire  
Charles H. Cook, Esquire  
Scott Elliott, Esquire  
Robert E. Tyson Jr., Esquire  
Belton T. Zeigler, Esquire

IN RE: Application of Wyboo Plantation	)	
Utilities, Inc. for Approval of New	)	
Schedule of Rates and Charges for	)	
Water and Sewer Services	)	
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	<b>Office of Regulatory Staff's</b>
	<b>Answer in Opposition to the</b>
	<b>Petition to Intervene of John C.</b>
	<b>Bruffey, Jr. and Deer Creek</b>
	<b>Plantation Properties Inc. And</b>
	<b>Request For Oral Argument</b>

1. Mr. John C. Bruffey, Jr. and Deer Creek Plantation Properties, Incorporated, (the “Petitioner”) filed the Petition on January 11, 2007, approximately one week prior to the scheduled hearing.<sup>2</sup> The Petition is untimely filed and Petitioners fail to provide any reasoning for filing out of time. The Commission issued a Notice of Filing and Hearing in this docket on August 29, 2006<sup>3</sup> stating “Any person who wishes to participate in this matter, as a party of record with the right of cross-examination should file a Petition to Intervene in accordance with

<sup>3</sup> The Commission issued a Notice of Rescheduled Hearing on December 14, 2006.

Commission's Rules of Practice and Procedure, on or before **September 29, 2006...**" The hearing is scheduled for Monday, January 22, 2007. To allow Petitioner to intervene at such a late date would substantially prejudice the parties in this matter.

2. Although 26 S.C. Ann. Reg. 103-836 (A)(3) does not address untimely intervention, South Carolina courts have adopted a four-part test for determining timeliness: (1) the time that has passed since the applicant knew or should have known of his or her interest in the suit; (2) the reason for the delay; (3) the stage to which the litigation has progressed; and (4) the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denial. *Davis v. Jennings*, 304 S.C. 502, 504 405 S.E.2d 601, 603 (1991). Failure to satisfy any one of the four requirements precludes intervention. *Ex Parte Reichlyn*, 310 S.C. 495, 427 S.E.2d 661 (1993). First, in the present matter, Wyboo Plantation Utilities, Inc. ("Wyboo") filed its Application in this matter on August 17, 2006.<sup>4</sup> The Commission issued a Notice of Filing and Hearing in this docket on August 29, 2006. Therefore, the public was put on notice in August 2006 of the current rate case filing. Notice was published in the Manning Times on September 7, 2006. The Applicant stated in an Affidavit that notice to customers was mailed on September 9, 2006. Furthermore, as shown by the exhibits to the Petition, the Petitioner has been, at least as early as November 2006, involved in discussions with Wyboo regarding establishment of service. Second, Petitioner has provided no reason for the extreme delay in filing the Petition. Third, the case is set to be heard in less than one week and at this point, no opportunity for discovery exists. Fourth, the prejudice to the parties including ORS by granting the intervention outweighs any harm to the Petitioner.

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<sup>4</sup> Originally, Wyboo filed an Application on January 7, 2005; however that Application was withdrawn and the August 17, 2006 Application was subsequently filed.

3. Procedural due process would be violated if the Petition is granted. At a minimum, due process requires notice and a right to a fair hearing. ORS would not be afforded a fair hearing if the Petitioner is allowed to intervene at this late date. The parties in this matter were subject to data requests and pre-filing testimony deadlines. ORS would be unable to conduct meaningful discovery upon Petitioner three business days prior to the scheduled hearing. Without the opportunity to conduct discovery, a party does not have a meaningful opportunity to be heard. Furthermore, Petitioner, who seeks the full rights to conduct cross-examination as well as to present testimony, has not pre-filed any testimony as required in 26 S.C. Ann. Regs. 103-869 (C). The regulation, in part, states, “In formal proceedings involving utilities, the Commission **shall** require any party and staff to file copies of testimony and exhibits and serve them on all other parties of record within a specified time in advance of the hearing.” (emphasis added). Therefore, if the Petitioner is granted rights of a party, the Petitioner would be required to pre-file testimony. As it is three business days prior to the hearing, it would be virtually impossible, assuming the Petitioner could pre-file testimony in that time period, for the existing parties to have any meaningful opportunity to rebut information contained in the testimony. For all the reasons discussed, granting the Petition would be a gross violation of due process.

4. Petitioner lacks standing to participate in this proceeding. The proposed rates and schedules contained in the Application filed by Wyboo on August 17, 2006, would only effect Wyboo customers. Petitioner is not a customer of Wyboo. Petitioner admits that the 69 lots in question have been sold. Although not stated in the Petition, ORS has learned that the 69 lots are in fact owned by Our Town Development, LLC. Upon information and belief, ORS understands that the principal of Our Town Development, LLC is also the principal of The Villas of Wyboo Owners Association Incorporated (“The Villas”). The Villas are ably represented in this case by

Mr. Rob Tyson, Esquire. Furthermore, ORS has not been able to verify that the 69 lots (in whole or in part) referenced in the Petition are within Wyboo's Commission approved service area.<sup>5</sup> Not only is Petitioner not a customer of Wyboo, it is possible that Petitioner may never become a customer of Wyboo. Additionally, several contingencies exist that would have to be satisfied in order for any potential Wyboo customers to exist with respect to the 69 lots. For instance, a contract for service would have to be executed between Wyboo and the owner of the lots, which is not the Petitioner. Furthermore, the Commission would have to approve an extension of the service area in order for Wyboo to service the 69 lots. Additionally, DHEC approvals would have to be obtained prior to Petitioner becoming customers of Wyboo.<sup>6</sup>

5. Pursuant to 26 S.C. Code Ann. Reg. 103-836 (A)(3)(a), the Petitioner is required to set forth, clearly and concisely, in its Petition, facts from which the nature of the Petitioner's interest can be determined. However, after examining the Petition and exhibits, it cannot be determined precisely where the Petitioner is alleging the 69 lots are located. More specifically, it cannot be determined whether the 69 lots discussed in the Petition are indeed located within the service area of Wyboo. Therefore, ORS submits that Petitioner has failed to satisfy 26 S.C. Code Ann. Reg. 103-836 (A)(3)(a).

6. For the same reasons outlined in the above paragraph, ORS respectfully submits that it would be a violation of administrative economy to allow Petitioner to intervene in the referenced matter at this late date. To the extent Petitioner has a claim that Wyboo is assessing fees that are not authorized by Wyboo's current tariffs and are unjust, unreasonable and unduly discriminatory, Petitioner has every opportunity to petition to fully participate in the companion

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<sup>5</sup> Again, ORS was served with a copy of the Petition on January 12, 2007, and has not had sufficient opportunity to investigate whether the 69 lots in question are in fact within the service territory of Wyboo.

<sup>6</sup> Exhibit 3 appears to be a contract offer for service subject to regulatory approvals being obtained. Page 2 indicates that prior to providing service, Wyboo would have to obtain approval from the South Carolina Public Service Commission.

docket, 2006-327-W/S. ORS's petition in Docket 2006-327-W/S addresses some of the same issues raised by Petitioner. Alternatively, Petitioner, to the extent a claim may exist, can file a separate complaint with the Commission against Wyboo.

7. In the event the Commission granted Petitioner's request to intervene in this matter at this late date, the Commission could be setting an unfavorable precedent for a person(s) or entity(ies) to use the timing of a proceeding as leverage for its own private interests. The incentive for a person or entity to intentionally wait until the eleventh hour to file a petition to intervene in order to divert the parties' time and resources and/or to enhance its position with regard to the negotiation of a contract exists. ORS is also concerned that in all utility rate cases, there is an incentive and an advantage to be gained by late intervention by person(s) or entity(ies) who desire to conduct cross-examination without themselves being subject to discovery or cross-examination.

8. For the reasons set forth above, ORS respectfully requests that Petitioner's request to intervene be denied. Petitioner, to the extent a claim may exist, has a forum in which to bring its concerns either through a separate complaint proceeding or before the Commission in Docket No. 2006-327-W/S.

WHEREFORE, ORS requests the following relief:

1. That the Commission deny, without further action from the parties, the Petition; or, in the alternative, schedule oral arguments regarding the Petition; and
2. That the Commission order any other appropriate action the Commission may deem necessary.

OFFICE OF REGULATORY STAFF

By: Wendy B. Cartledge  
C. Lessie Hammonds, Esquire  
Wendy Cartledge, Esquire  
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Telephone: (803) 737-0800  
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Columbia, South Carolina  
January 16, 2007

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2005-13-WS**

IN RE:	)	
Application of Wyboo Plantation Utilities,	)	
Incorporated for Approval of New Schedule	)	<b>CERTIFICATE OF</b>
Of Rates and Charges for Water and Sewer	)	<b>SERVICE</b>
Services	)	

This is to certify that I, Pamela J. McMullan, an employee with the Office of Regulatory Staff, have this date served one (1) copy of the **ANSWER IN OPPOSITION TO THE PETITION TO INTERVENE** in the above-referenced matter to the person(s) named below by causing said copy to be deposited in the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below:

**John F. Beach, Esquire**  
Ellis Lawhorne & Sims, PA  
Post Office Box 2285  
Columbia, SC 29202

**Charles H. Cook, Esquire**  
**Scott Elliott, Esquire**  
Elliott & Elliott, P.A.  
721 Olive Street  
Columbia, SC, 29205

**Robert E. Tyson Jr., Esquire**  
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**Belton T. Zeigler, Esquire**  
Haynsworth Sinkler Boyd, PA  
Post Office Box 11889  
Columbia, SC, 29211

  
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Pamela J. McMullan

January 16, 2007  
Columbia, South Carolina